BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking Regarding the Implementation of the Suspension of Direct Access Pursuant to Assembly Bill 1X and Decision 01-09-060	))))))	Rulemaking 02-01-011 (January 9, 2002)

RESPONSE OF THE CALIFORNIA MUNICIPAL UTILITIES ASSOCIATION TO THE PETITION OF PACIFIC GAS AND ELECTRIC COMPANY TO MODIFY DECISION 06-07-030

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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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In accordance with Rule 16.4(f) of the Rules of Practice and Procedure of the Public Utilities Commission of the State of California ("Commission"), the California Municipal Utilities Association ("CMUA") files this response to the "Petition of Pacific Gas and Electric Company to Modify Decision 06-07-030," dated November 16, 2006 ("PG&E Petition").

I. SUMMARY

Reduced to its simplest form, the PG&E Petition seeks the Commission's approval to charge municipal departing load ("MDL") based on a methodology that would ***substantially and undeniably overcollect*** Cost Responsibility Surcharge ("CRS") funds contrary to Commission decisions. Instead of establishing the Department of Water Resources ("DWR") Power Charge based on actual costs, as required by numerous Commission decisions (including Decision ("D.") 06-07-030), PG&E proposes to charge MDL based on a methodology that calculates the DWR Power Charge by subtracting other CRS elements from a 2.7 cents per kWh cap. PG&E does not deny that its proposed methodology will overcollect CRS funds from MDL. Instead, PG&E defends its proposal by claiming that its proposal represents a Commission-adopted ***rate*** methodology. PG&E is wrong. At best, the 2.7 cents per kWh cap was a temporary

"placeholder" for MDL until ***actual*** costs could be determined. Actual costs (or, in the case of PG&E, reasonable estimates) have been determined through the CRS working group process. PG&E's proposed modification should be rejected; the DWR Power Charge rate for MDL should be based on actual cost estimates.

The additional request contained in the PG&E Petition (namely, the proposal to disallow the use of past-years' ***negative*** Indifference Rate amounts to offset future years' ***positive*** Indifference Rate amounts) should also be rejected. This portion of the PG&E Petition is noticeably devoid of any policy, legal or factual support. At sum, this proposal would condone ratcheted, one-way cost-shifting in contravention of Commission determinations establishing the ***indifference*** standard. As determined in D.06-07-030 and other Commission decisions, the indifference standard requires reasonable efforts to offset negative amounts in one year against positive amounts in another year. Such multi-year netting results in an accurate measurement of the ***total amount*** of above-market costs ***over time.*** Accordingly, PG&E's proposed modification should be denied.

II. PG&E's PROPOSED MODIFICATION OF THE DWR POWER CHARGE

A. PG&E's Unsupported Claim That The Commission Has "Already Adopted" A DWR Power Charge "Rate" For MDL Is Wrong

PG&E states that "[t]he Commission has already adopted pre-June 30, 2006, DWR Power Charge ***rates*** for non-bundled customers responsible for the costs of DWR power".[1] PG&E is wrong with respect to MDL. Importantly, PG&E cannot (and does not) point to any decision, or resolution approving an implementing advice letter filing, in which the Commission "adopted" an actual DWR Power Charge rate for MDL. Instead, PG&E incorrectly asserts that

[1] PG&E Petition at 2 (emphasis added).

the Commission has implemented a 2.7 cents per kWh CRS cap as a rate.[2] As described below, CMUA does not agree with PG&E's assertion regarding the applicability of the CRS cap. Nevertheless, even if the cap were currently applicable to MDL, the cap does not automatically translate into a ***final***, adopted DWR Power Charge ***rate*** for MDL; they are not the same, as described below.

PG&E's misunderstanding of the DWR Power Charge rate appears to stem from its fundamental misunderstanding of the 2.7 cents per kWh CRS cap with reference to MDL. Contrary to PG&E's assertion, the cap for MDL has never been implemented or applied; it has been indefinitely deferred. PG&E states that "D.03-07-028 applied the same 2.7 cent per kWh cap to municipal departing load", and that "[t]he cap for MDL was not implemented subject to refund, but rather on an interim basis until the Commission decided whether it should be applied 'for a longer period.'"[3] PG&E is wrong. An actual CRS cap for MDL has never been implemented; such a cap has been deferred ***from the outset*** of D.03-07-028.

PG&E fails to mention Conclusion of Law 14 of D.03-07-028, which clearly states that "[t]he issue of whether or to what extent to cap the MDL CRS ***should be deferred*** pending further developments with respect to the DA CRS cap and the quantification of MDL CRS obligation."[4] In a ruling, the assigned Administrative Law Judge ("ALJ") confirmed that the issue of an MDL CRS cap was deferred in D.03-07-028: "In D.03-07-028, the Commission ***deferred consideration*** of whether or to what extent to impose a similar cap on the CRS for

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2 *See id.* at 3.

3 PG&E Petition at 3.

4 D.03-07-028 at 77; Conclusion of Law 14 (emphasis added). While PG&E cites Ordering Paragraph 16 in its petition (PG&E Petition at 3), PG&E fails to emphasize a key phrase at the beginning of the ordering paragraph that qualifies the remainder of the paragraph: "Pending further order…".

MDL."[5] The ALJ also confirmed that the issue of an MDL CRS cap was ***indefinitely*** deferred. After noting that further comments had been received on this issue, the ALJ continued to defer the issue by ruling that "the question of whether some per-kWh dollar cap is warranted for MDL customer billings ***will be deferred*** until the overall CRS amount for MDL is calculated pursuant to the Working Group process outlined above."[6] Ultimately, the CRS Working Group concluded that, in light of ***actual*** MDL CRS obligations that were less than the 2.7 cents per kWh CRS cap, an MDL CRS cap "does not appear to remain an issue."[7] PG&E points to nothing in its petition to contradict the undeniable fact that an MDL CRS cap has never been implemented or applied.

B. The DWR Power Charge Obligation Must Be Based On Actual Costs (Not Placeholder Estimates)

PG&E's argument concerning a 2.7 cents per kWh CRS cap is a red herring. Even if there had been a 2.7 cents per kWh CRS cap applied to MDL, this would not justify PG&E's proposal. PG&E asserts that "the cap for MDL was not implemented subject to refund", arguing therefore that the 2.7 cents per kWh CRS cap was in actuality ***a final "rate" determination*** with respect to the CRS liability of MDL. PG&E is wrong. The Commission has stated repeatedly that the ultimate or final CRS to be borne by MDL would be based on ***actual costs***. In short, ***actual*** MDL CRS obligations were not to be ***conclusively*** determined by any 2.7 cents per kWh CRS ***cap***; rather, MDL CRS obligations were to be determined in accordance with subsequent

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5 ALJ Ruling, dated March 28, 2005, at 8 (emphasis added).

6 *Id.* at 9 (emphasis added).

7 CRS Working Group Report at 4, note 2. References to the "CRS Working Group Report" are to the "Final Report of the Working Group to Calculate the CRS Obligations Associated with Municipal Departing Load and Direct Access", which was formally incorporated into the record in R.02-01-011 by Administrative Law Judge ("ALJ") Ruling, dated February 23, 2006, and constitutes a key part of the record that forms the basis for D.06-07-03.

true-up processes – processes that largely concluded with the finalization of the CRS Working Group report and the issuance of D.06-07-030.

In D.03-07-028, the Commission expressly stated that "[t]he MDL CRS obligation level shall be ***subject to final determination***, updating and ***true-up*** in accordance with the processes and procedures adopted for final determination, updating and true up of the Direct Access (DA) CRS described in D.02-11-022 or applicable successor decisions."[8] In order to support the determination of ***actual*** MDL CRS obligations, the investor-owned utilities were ordered in D.03-07-028 to identify, track and account for balances associated with the MDL CRS obligation "so that an ***accurate determination can be made*** of the MDL CRS obligation."[9]

In his March 28, 2005 ruling, ALJ Pulsifer stated that "[a]nother outstanding issue is the quantification of the MDL CRS obligation to date."[10] ALJ Pulsifer noted that, in D.05-01-040, the Commission had again deferred the "***final determination*** of the CRS obligations applicable to MDL."[11] In recognition of that fact, ALJ Pulsifer ruled that "the Energy Division is authorized to move forward with establishing the working group, as it has described, to produce the calculations required for the Commission to adopt the MDL CRS obligations to date."[12] An outcome of these efforts by the Commission was the adoption of various tables (specifically, table 3B and table 3C) in D.06-07-030. PG&E acknowledges that these tables "presented illustrative [MDL] CRS accrual rates".[13] However, PG&E now asserts that the "tables had little

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8 D.03-07-028 at 78 (Ordering Paragraph 7).

9 *Id.* at 79; Ordering Paragraph 11 (emphasis added).

10 ALJ Ruling at 6.

11 *Id.* at 7 (citing D.05-01-040 at 9.)

12 *Id.* at 7-8.

13 PG&E Petition at 5.

value by the time D.06-07-030 was adopted…."[14] PG&E's new assertion is incomprehensible. The tables in the D.06-07-030 provide the best estimate of ***actual*** MDL CRS obligations, and PG&E should not be allowed at this late juncture to conveniently disavow the findings that it previously supported.

C. PG&E's Fails To Disclose The True Impact Of Its Proposed DWR Power Charge Methodology

1. The MDL CRS Accrual Rates Set Forth In D.06-07-030 Demonstrate The Substantial Overcollection Of Funds (And Cost-Shifting) That Will Result From PG&E's Proposal

As noted above, the tables in the D.06-07-030 provide the best estimate of ***actual*** MDL CRS obligations. From these tables, the Commission is able to discern the unreasonableness of PG&E's proposal. As an initial matter, it is impossible to discover from the PG&E Petition itself what PG&E proposes to actually charge MDL for the DWR Power Charge during the Pre-July 2006 Period. This is so because during the Pre-July 2006 Period PG&E proposes to make use of a methodology for determining overall CRS rates that does not expressly state the amount of the DWR Power Charge. Rather, PG&E proposes to determine the DWR Power Charge on a residual basis, where the DWR Power Charge is deemed to be the difference between $0.027 per kWh and (a) the DWR Bond Charge, (b) the Energy Cost Recovery Amount, and (c) the Competition Transition Charge.[15] As a result of the use of this methodology, under PG&E's proposal the DWR Power Charge for MDL during 2005 is revealed to be $0.01347 per kWh (or 1.347 cents per kWh).[16]

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[14] *Id.*

[15] *See* PG&E Petition at 2 ("The DWR power charge was derived residually, based on the difference between the cap and the sum of the other applicable CRS charges.").

[16] The calculation used to arrive at this figure is as follows: $0.027 - $00485 [DWR Bond Charge] - $00437 [Energy Cost Recovery Amount] - $00431 [Competition Transition Charge].

After first calculating the unstated actual DWR Power Charge in PG&E's proposal, it is then possible to compare PG&E's proposed "rate" with the range of DWR Power Charge estimates discussed and displayed in D.06-07-030. The comparison is revealing. The tables in Appendix 6 to D.06-07-030 "set forth the Working Group's calculations regarding MDL CRS obligations."[17] Table 3B in Appendix 6 "sets forth the illustrative calculations of MDL CRS accrual rates for the period 2004-2011, based on the benchmark adopted in D.05-01-040 (applied through 2005) and the Working Group's recommended benchmark through 2011."[18] Table 3B of Appendix 6 reveals that the illustrative DWR Power Charge accrual rate applicable for PG&E during 2005 is $0.0000 per kWh. Stated differently, for 2005 the best estimate of the actual MDL obligation for the DWR Power Charge is zero, or thereabouts.[19]

So, instead of charging MDL a DWR Power Charge based on the illustrative accrual rate of $0 or thereabouts, as shown in D.06-07-030, PG&E proposes to charge MDL a DWR Power Charge of $0.01347 per kWh. The difference between PG&E's proposed DWR Power Charge rate (1.347 cents per kWh) and the illustrative DWR Power Charge accrual rate ($0) will result in ***millions of dollars*** being immediately overcollected from MDL during the Pre-July 2006 Period, resulting in a significant cost-shift to MDL. Nowhere in the PG&E Petition does PG&E reveal this fact.

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17 D.06-07-030, Appendix 6.

18 *Id.* at 30. *See also, id.* at 53 (Finding of Fact 31).

19 Table 3C of Appendix 6 shows an illustrative DWR Power Charge accrual rate of $0.000264 per kWh for 2005. The Commission's Energy Division was tasked in D.06-07-030 with convening meetings to "finalize the calculation of MDL CRS accrual charges and obligations consistent with [D.06-07-030]…." (*See* D.06-07-030 at 63; Ordering Paragraph 21.)

2. Comparing PG&E's Proposed DWR Power Charge Methodology To SCE's And SDG&E's Methodology Reveals A Flawed PG&E Approach

On November 3, 2006, a number of CRS Working Group parties filed a joint petition for modification of D.06-07-030 requesting that modified CRS accrual rates be adopted for 2003-2006, with respect to Southern California Edison Company ("SCE), and for 2006, with respect to San Diego Gas and Electric Company ("SDG&E"). Also included as part of the petition is "[a]n SCE MDL CRS billing sample based on the Modified Table 3C…."[20] From Attachment B it is easy to discern that SCE is not employing the same methodology as PG&E with regard to determining the DWR Power Charge for MDL. As noted above, PG&E proposes to determine the DWR Power Charge by subtracting all other applicable CRS elements from $0.027 per kWh, resulting in a DWR Power Charge of $0.01347 per kWh. SCE, on the other hand, determines the DWR Power Charge by using the specified accrual rate from modified Table 3C, specifically, $0.00643 per kWh. Interestingly, had SCE employed the same methodology as proposed by PG&E, SCE would have arrived at a DWR Power Charge of $0.02208 per kWh, instead of $0.00643 per kWh.

D. PG&E Cannot Justify The Substantial Overcollection Of Funds (And Cost-Shifting) That Will Result From Its Proposed DWR Power Charge Methodology

1. PG&E Has Failed To Justify Its Proposal To Charge MDL Significantly More In The DWR Power Charge Than "Illustrative" Estimates Of Costs Associated With the DWR Power Charge

PG&E has the burden to describe clearly its proposal and to show how its proposal has been previously authorized through a Commission decision. PG&E makes neither

[20] Working Group Petition at 7, referencing Attachment B to the Working Group Petition.

showing, but simply imports its use of the proposed methodology from other contexts – contexts unrelated to MDL. PG&E must be required to meet its burden of proof.

2. PG&E's Proposal To Charge MDL Significantly More For The DWR Power Charge Than Current Estimates Of Costs Associated With the DWR Power Charge Is Unreasonable

As described above, application of a 2.7 cents per kWh CRS methodology to MDL, as proposed by PG&E, will result in more than 1.3 cents per kWh being collected from MDL than is needed to repay actual MDL CRS obligations. Not only has PG&E not provided a reasonable explanation for this proposed overcollection of CRS funds, but it cannot provide a reasonable explanation. PG&E's proposal is unreasonable principally because the proposal bears no relationship to past or present estimates of the DWR Power Charge obligations of MDL. For the Pre-July 2006 Period, a reasonable estimate of the DWR Power Charge obligation of MDL is zero, or thereabouts, yet PG&E proposes to charge MDL an imputed cost of 1.347 cents per kWh for the DWR Power Charge, with no true-up provision.

PG&E's proposal to significantly overcollect CRS funds from MDL is likewise unreasonable based on future estimates of DWR Power Charge obligations. As shown in the applicable tables in Appendix 6 to D.06-07-030, the forecasted MDL Power Charge is expected to be "negative" at least through 2009.[21] It is unreasonable to overcollect during the Pre-July 2006 Period with the expectation of using the ***over***collection to address future years' ***under***collection when, as is the case here, there is no reasonable expectation that there will be an undercollection of the DWR Power Charge in future years.

[21] *See* Tables 3B and 3C, both of which use the benchmark adopted in D.06-07-030. (*See* D.06-07-030 at 57; Ordering Paragraph 2.)

3. Application Of PG&E's Proposed 2.7 Cents Per kWh CRS Methodology To MDL Is Discriminatory

As noted above, by applying the 2.7 cents per kWh CRS methodology to MDL, as proposed, PG&E will significantly overcollect CRS funds beyond any reasonable estimate of actual or future costs. In the context of CRS, the Commission has only countenanced an overcollection of CRS funds in instances (1) where such overcollection is used as a means of repaying a previous ***under***collection of funds and (2) where any overcollection is subject to a timely "true-up." Neither of these conditions is applicable to the situation applicable to MDL, and as a result PG&E's attempt to apply a 2.7 cents per kWh CRS methodology to MDL will result in discriminatory rate treatment.

First, MDL is not similarly situated to Direct Access customers. In the case of Direct Access customers, to which the 2.7 cents per kWh CRS methodology has previously been applied, an ***over***collection in the Pre-July 2006 Period is used to address a previous ***under***collection. PG&E has not shown, however, nor can it show, that an undercollection exists with respect to MDL to the degree reflected by overcharging MDL a DWR Power Charge of approximately 1.3 cents per kWh in 2005. As such, it is discriminatory to apply the same residual DWR Power Charge methodology to MDL as is applied to Direct Access customers.

Second, MDL is not similarly situated to Community Choice Aggregation customers. In the case of Community Choice Aggregation ("CCA") customers, to which a 2 cents per kWh CRS cap has been applied as a placeholder, PG&E has proposed a true-up mechanism that has the effect of repaying any resulting overcollection. It should be noted also that the Commission is currently considering eliminating entirely the 2.0 cents per kWh CCA CRS methodology in light of the findings in D.06-07-030.

4. The Commission's Treatment Of Overcollections In D.06-07-030 Stands Against PG&E's Proposal To Overcollect DWR Power Charge Funds From MDL

Throughout D.06-07-030, the Commission expressed an interest in quickly repaying any overcollection that may have occurred in connection with the use of a residual DWR Power Charge methodology using a cap of 2.7 cents per kWh. Noting that "[t]he SDG&E undercollection of DA CRS obligations was fully paid off in 2005…", the Commission directed SDG&E to "file an advice letter, if necessary, to credit from bundled to DA Non-Exempt customers the overcollection amount resulting from the time lag of when the historical undercollection was paid off in 2005 and when the charge was set to zero on November 15, 2005."[22] Additionally, in order to address a situation in which PG&E's "DA customers responsible for the DWR power charge will have paid the full 2.7¢ per kWh CRS amounts for…two months longer than necessary to complete repayment of the DA CRS undercollection for PG&E" the Commission approved a proposal for a bill adjustment for these DA customers, calculated as "the difference between the CRS as it exists once it is lowered pursuant to the instant Commission decision and the CRS these non-exempt DA customers paid during July and August."[23]

PG&E's proposed use of a residual DWR Power Charge methodology (using a cap of 2.7 cents per kWh) stands in opposition to the principle expressed above. This is so because PG&E's proposal would clearly create the problem (CRS ***over***collection) that the Commission sought to remedy in D.06-07-030 through bill credits, adjustments and other mitigation measures. Specifically, in the absence of PG&E's proposed residual DWR Power

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22 *Id.* at 24.

23 *Id.* at 25-26.

Charge methodology (based on a 2.7 cents per kWh cap), there would be no problem (CRS ***over***collection from MDL) to remedy in the future. While the situations described above are at least understandable, as they derive from instances of inadvertent overcollection due to a lack of knowledge as to actual costs prior to the finalization of the CRS Working Group Report, PG&E's proposal would knowingly overcollect. Such an outcome is not already authorized, nor should the Commission, as a matter of policy, ever permit such an outcome.

E. The Commission Should Require PG&E To Modify Its DWR Power Charge Methodology

As currently proposed, PG&E's proposed DWR Power Charge methodology, using a CRS cap of 2.7 cents per kWh, is unreasonable, and should not be authorized. PG&E cannot justify its proposal, since the proposal would immediately and unreasonably result in a significant overcollection of CRS funds. As such, the Commission must reject PG&E's proposal, and require PG&E to resubmit CRS accrual rates along the lines previously directed in D.06-07-030, as has been done by SCE and SDG&E through the Working Group Petition.

III. PG&E'S PROPOSED TREATMENT OF NEGATIVE INDIFFERENCE AMOUNTS

A. PG&E Has Already Implemented The Proper Interpretation Of Ordering Paragraph 9

In the PG&E Petition, PG&E claims that "intent of the two ordering paragraphs, taken together is clear. Negative indifference amounts are to be tracked only until the CRS undercollection is reduced to zero."[24] However, PG&E has not always held this interpretation. On August 4, 2006, PG&E filed Advice Letter 2871-E, which PG&E claimed was filed "in compliance with Decision (D.) 06-07-030 to meet the requirements of the ordering paragraphs of

[24] PG&E Petition at 6-7.

that decision."[25] In Advice Letter 2871-E, PG&E sets forth the following interpretation of Ordering Paragraph 9:

> "PG&E requests that the Commission approve a new memorandum account, the NIAMA, in compliance with OP 9 of the decision. The establishment of this memorandum account to record and track the negative indifference amounts that may accrue will allow PG&E to apply these accumulated negative indifference amounts to future positive indifference amounts consistent with the Commission directives in D.06-07-030. Effective September 1, 2006, negative indifference amounts recorded and tracked in the memorandum account will be eligible to be applied prospectively to offset future positive indifference amounts. The negative indifference amounts will only be eligible to offset future positive indifference and will not be eligible to be applied against other components of the CRS."[26]

The interpretation of Ordering Paragraph 9 that PG&E sets forth in Advice Letter 2871-E is correct. As described further below, PG&E's interpretation in Advice Letter 2871-E properly addresses the key elements of the Commission's reasoning, both in D.06-07-030, relating to negative Indifference Rates, and in D.05-12-045, relating to negative ongoing CTC, namely (1) no net payment would be made to the customer; (2) after the CRS undercollection balance reaches zero (in PG&E's case, as of "September 1, 2006") (a) a negative Indifference Rate in one year may offset a positive Indifference Rate in a successive year;[27] and (b) a negative Indifference Rate may not offset other CRS elements.[28]

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25 PG&E Advice Letter 2871-E at 1.

26 *Id.* at 4.

27 *See id.* ("[N]egative indifference amounts recorded and tracked in the memorandum account will be eligible to be applied prospectively to offset future positive indifference amounts.").

28 *See id.* ("The negative indifference amounts will only be eligible to offset future positive indifference and will not be eligible to be applied against other components of the CRS.").

The Commission, through the Energy Division Director, agreed with PG&E's interpretation of Ordering Paragraph 9.[29] Now, nearly five months after it filed Advice Letter 2871-E, PG&E proposes a different interpretation of Ordering Paragraph 9 – one that turns PG&E's previous interpretation (which was approved by the Commission) on its head. PG&E's new interpretation of Ordering Paragraph 9 should not be allowed.

B. The Intent Of Ordering Paragraph 9 Is Clarified In Light Of D.05-12-045

PG&E seeks to interpret Ordering Paragraph 9 by referring to the "joint recommendation of the 'DA Agreement Parties'…."[30] Importantly, with the exception of the other two IOUs, none of the other five DA Agreement Parties join in PG&E's petition for modification. In any event, if any light is to be shed on the proper interpretation of Ordering Paragraph 9, such light is not to be found coming from the position papers of the IOUs, but rather from other similar Commission decisions (namely, D.05-12-045, which was exclusively relied upon by the Commission in D.06-07-030).

In each of the four paragraphs of the section in D.06-07-030 in which the Commission discussed the issue of a negative Indifference Rate,[31] D.05-12-045 is the exclusive reference and source of authority. It is clear from these paragraphs that Ordering Paragraph 9 is to be interpreted in light of the Commission's similar treatment of negative ongoing CTC in D.05-12-045.

Two things may be observed with respect to D.05-12-045 regarding negative ongoing CTC. First, D.05-12-045 included three overarching principles relating to negative ongoing

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29 On November 7, 2006, the Energy Division Director informed PG&E that Advice Letter 2871-E was approved without change as of September 1, 2006.

30 PG&E Petition at 7.

31 *See* D.06-07-030 at 41-42.

CTC:[32] (1) no payments would be made to DA and DL customers; (2) negative ongoing CTC could only be used offset positive above-market costs (it could not be used to offset qualifying facility restructuring costs, for example, or other components of the CRS); and (3) the tracking of negative CTC would cease when all ongoing CTC costs have been recovered, with any remaining negative CTC balance in the tracking account having no further effect on cost allocation or rates. As seen from PG&E's previous interpretation of Ordering Paragraph 9,[33] these same principles were applied to the negative Indifference Rate in D.06-07-030. Parallel treatment of ongoing CTC and the Indifference Rate is entirely appropriate because both CRS elements measure costs ***over time***. As discussed further below, bundled customer "indifference" cannot be measured or achieved ***over time*** if multi-year netting is not allowed. Disallowing multi-year netting, as proposed by PG&E, would condone ratcheted cost-shifting, allowing within the ongoing Indifference Rate calculation the inclusion of ***above-market*** costs in one year while disallowing the inclusion of ***below-market*** costs in another year. In addition to being flatly contrary to D.05-12-045 and D.06-07-030, such an outcome would be inconsistent with the "indifference" calculation because it would "selectively focus only on certain components of cost shifting" (namely, one year's ***positive*** Indifference Rate) "while ignoring others" (namely, another year's ***negative*** Indifference Rate).[34]

Second, in D.05-12-045, the Commission explained the rationale for its decision to allow negative CTC to offset positive CTC. The Commission stated that "[t]he use of negative CTC to

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[32] See D.05-12-045 at 22.

[33] *See* discussion in Section III.A., above.

[34] *See, e.g.,* D.02-11-022 at 25 ("The intent underlying the indifference calculation, however, is to determine the cost shifting that resulted from the migration of certain bundled customers to DA. An accurate measure of cost shifting cannot be determined if we selectively focus only on certain components of cost shifting while ignoring others.").

offset positive CTC is reasonable because it results in a more accurate measurement of the ***total amount*** of above-market costs ***over time***."[35] As the Commission realized in D.06-07-030, the same rationale is true with respect to negative Indifference Rates. Negative Indifference Rates do not represent a payment to DA and DL customers;[36] rather, a negative Indifference Rate represents one part of the ***overall measurement*** of the total above-market portfolio costs over time. It would be discriminatory and unreasonable for the Commission to require that only one part of the overall measurement (a ***positive*** Indifference Rate in one year) be included the overall measurement, and not include the other part of the overall measurement (a ***negative*** Indifference Rate in another year). Such an outcome would not be an "accurate measurement of the total amount of above-market costs over time."[37] As such, the Commission should not grant PG&E's proposed modifications to D.06-07-030, as these modifications would clearly result in an ***in***accurate measurement of the total amount of above-market costs ***over time***.

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35 D.05-12-045 at 22 (emphasis added). *See also,* D.06-07-030 at 42 (""D.05-12-045 did not result in the payment of negative ongoing CTC to any customers, but merely expanded the period of time for measuring ongoing CTC, so that negative ongoing CTC in future years is used to offset positive ongoing CTC in future years.").

36 *See* D.06-07-030 at 54; Conclusion of Law 4.

37 *See* note 33, above.

IV. CONCLUSION

For the reasons stated and supported herein, CMUA respectfully requests that the Commission deny PG&E's requested modifications to D.06-07-030.

Dated: December 18, 2006

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the following is true and correct:

On December 18, 2006, I caused to be served an electronic copy of the attached:

Response Of The California Municipal Utilities Association
To The Petition Of Pacific Gas And Electric Company
To Modify Decision 06-07-030

on all known parties to R.02-01-011, or their attorneys of record, for whom an e-mail address has been provided. I served a copy of the document on those without e-mail addresses by mailing the document by first-class mail addressed as follows:

See attached service list

Executed this 18th day of December, 2006, at Sacramento, California.

Vicki Ferguson

CALIFORNIA PUBLIC UTILITIES COMMISSION
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